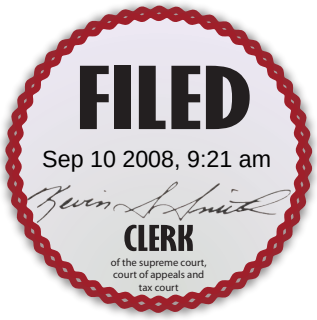

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IN THE
COURT OF APPEALS OF INDIANA

GEORGE E. HUSTON,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 71A04-0805-PC-277
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE ST. JOSPEH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0706-FB-89

September 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following his guilty plea and conviction for one count of Criminal Deviate Conduct as a Class B felony,[1] Appellant/Defendant George Huston challenges his sentence of eighteen years of incarceration. Huston contends that the trial court abused its discretion in finding that he was dangerous and that his sentence is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis for Huston's guilty plea, on June 11, 2007, Huston's sixty-eight-year-old wife took too much medication and became mentally incapacitated. While she was mentally incapacitated, Huston placed his mouth and tongue on her anus. According to the probable cause affidavit, Huston's stated justification for this act was that it was an attempt to revive his non-responsive wife, whom he believed to be either dead or dying. On June 22, 2007, the State charged Huston with nine counts of Class B felony criminal deviate conduct. On January 8, 2008, pursuant to a written plea agreement, Huston pled guilty to one count of Class B felony criminal deviate conduct.

On February 7, 2008, the trial court sentenced Huston to eighteen years of incarceration. At sentencing, the trial court admitted a transcript of a 1990 statement Huston gave to police, in which he admitted that he had "place[d his] finger inside" his granddaughter, that he had taken a bath with his daughters when they were nine and approximately four years old, and that he had made his younger daughter hold his penis while he urinated. The trial court concluded that Huston was dangerous, citing the attack on his wife and Huston's explanation for it, his criminal record, and the 1990 statement to

[1] Ind Code § 35-42-4-3 (2007).

police in which he admitted to inappropriate sexual activity with his daughters and granddaughter. The trial court also considered that Huston's wife had suffered "devastation" and that he had violated a position of trust. Sentencing Tr. p. 47. By way of mitigation, the trial court noted that Huston was elderly, that he had pled guilty, and that he had expressed regret for his actions.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Sentencing Huston

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). Nothing in the amended statutory regime changes this standard. *Id.* So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Id*. An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.* The trial court may abuse its discretion by entering a sentencing statement that explains reasons for imposing a sentence including a finding of aggravating and mitigating factors if any, but the record does not support the reasons, the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. *Id*. at 490-91.

Huston contends that the trial court improperly considered his 1990 statement in concluding that he posed a danger to others, a statement in which he essentially admitted to molesting his daughters and granddaughter. Specifically, Huston argues that the trial

court's consideration of the statement violated his Sixth Amendment rights as defined in *Blakely v. Washington*, 542 U.S. 296 (2004), because the fact of the prior molestations, which was used to enhance his sentence, was neither found by a jury nor admitted by Huston. Huston, however, committed his crime on June 11, 2007, over two years after the legislature amended Indiana's sentencing scheme to eliminate the Sixth Amendment infirmity first explained in *Blakely*. *See* Ind. Code § 35-50-2-5 ("A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.") (effective April 25, 2005). The trial court's consideration of the 1990 statement did not violate Huston's Sixth Amendment rights.

Huston also argues that the 1990 statement should not have been considered because he claimed at sentencing that he had but vague memory of making the statement, that he "got railroaded on that[,]" and that the statement did not accurately reflect what actually occurred. Tr. p. 29. Huston, however, provides us with no authority that any of this, even if true, would prevent the trial court from legally considering the 1990 statement, and we are aware of none. We conclude that the trial court, relying in part on the l990 statement, did not abuse its discretion in finding Huston to be a danger to others.

II. Appropriateness

We retain the authority under Indiana Appellate Rule 7(B) to review a sentence for appropriateness. *Id.* Indeed, even where the trial court has been meticulous in following the proper procedure in imposing a sentence, we still may exercise our authority under Appellate Rule 7(B) to revise a sentence that we conclude is inappropriate in light of the

nature of the offense and the character of the offender. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005) (citations omitted). The defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

The nature of Huston's offense was the reprehensible exploitation of his incapacitated wife, reacting to her emergency not by seeking help, but by satisfying his own carnal desires. Indeed, the record indicates that, even though Huston believed that his wife was either dead or dying, he was indifferent to everything but the opportunity to do "things" to his wife that she had specifically told him in the past not to do. Appellant's App. p. 18. Under the circumstances, we find Huston's offense to be particularly egregious.

Huston's character is that of an apparent long-time sexual predator who, in our view, presents a clear danger to those over whom he has some control. In addition to the present crime and the actions Huston admitted in the 1990 statement, his record of criminal convictions and arrests is consistent with this conclusion. In 1962, Huston was convicted of accosting a minor (apparently a sex crime) and, in 1964, possessing and circulating obscene pictures. Huston has also been charged with assault and battery with intent to gratify sexual desires and two counts of public indecency.

Moreover, we are frankly disturbed by Huston's rationalizations for his actions, which do not speak well of his character, to say the least. In this case, Huston claimed that he was only attempting to revive his incapacitated wife when he placed his mouth and tongue on her anus. When Huston digitally penetrated his granddaughter, he claimed

to have done so "[t]o educate her that the human body is not dirty[.]" Appellant's App. p. 21. One is left to ponder which would be the more troubling–if the above statements were sincere or if they merely represented *post hoc* rationalizations. We need not decide, however, as they reflect poorly on Huston's character in any event. In light of the nature of his offense and his character, we conclude that Huston's eighteen-year sentence is appropriate.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.